Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	
Procedures for Reviewing Requests for Relief From State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934	WT Docket No. 97-192

REPLY COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC., SOUTHWESTERN BELL WIRELESS, INC. AND PACIFIC BELL MOBILE SERVICES

I. INTRODUCTION.

Southwestern Bell Mobile Systems, Inc., Southwestern Bell Wireless Inc., and Pacific Bell Mobile Services (collectively referred to as "SBMS") hereby reply to selected issues raised in the comments filed in response to the Notice of Proposed Rulemaking ("NPRM") released on August 25, 1997 in the above-captioned proceeding.[1]

The positions taken in the comments reflect the strong and opposing interests of the commenters. The personal wireless service[2] providers are anxious to proceed with the placement of personal wireless service facilities without having to face unique local approaches to issues of the environmental effects of radio frequency

[1] In the Matter of Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c) (7)(B)(v) of the Communications Act of 1934, WT Docket No. 97-192 Notice of Proposed Rulemaking released August 25, 1997 ("NPRM").

[2] 47 USC §332(3)(7)(c) defines personal wireless services to mean commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

emissions. The local and state governments are anxious to be able to examine these issues and to respond directly to any concerns about RF emissions raised by their constituents. The Commission must keep in mind that Congress specifically sought to avoid this clash of interests. In the Conference Report accompanying the Telecommunications Act of 1996, the conferees explained that they "intend Section 332(c)(7)(B)(iv) to prevent a state or local government or its instrumentalities from basing the regulation of the placement, construction, or modification of CMS facilities directly or indirectly on the environmental effects of radio frequency emissions if those facilities comply with the Commission's regulations adopted pursuant to Section 704(b) concerning such emissions."[3] The Commission adopted regulations pursuant to Section 704(b)[4] after a detailed examination of the issues stating, "we believe the guidelines we are adopting will protect the public and workers from exposure to potentially harmful RF fields."[5] The Commission must not allow local and state governments to second-guess the adequacy of those environmental regulations in this proceeding.

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[3] H.R. Conf. Rep. No. 104-458 at 208 (1996).

[4] In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order, 11 FCC Rcd 15123 (1997), First Memorandum Opinion and Order, 11 FCC 17512 (1997), Second Memorandum Report and Order, released August 25, 1997.

[5] Id., Report and Order, para. 1.

II. THE COMMISSION'S REQUIREMENTS SHOULD SET THE LIMIT ON WHAT STATE AND LOCAL JURISDICTIONS CAN REQUEST OF LICENSEES.

The Commission proposed two approaches to demonstrating compliance with its RF emission regulations.[6] Under alternative one, state and local jurisdictions can only require personal wireless service facilities that are categorically excluded from routine Commission evaluation to certify in writing that the proposed facility will comply with the Commission's RF emissions guidelines. With respect to personal wireless facilities that are not categorically excluded, local and state authorities can only request copies of any and all documents related to RF emissions submitted to the Commission as part of the licensing process.[7]

Alternative two treats facilities that are not categorically excluded in the same manner. However, local and state jurisdictions may request a demonstration of compliance from personal wireless service providers for facilities that are categorically excluded.[8] While SBMS did not choose one alternative over the other in its comments because many of its facilities are not categorically excluded, upon further analysis SBMS strongly supports alternative one.

It makes little sense to require facilities that the Commission found to "offer little or no potential for exposure in excess of the specified guidelines"[9] to demonstrate compliance. Moreover, the Commission previously concluded that

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[6] NPRM, para. 142.

[7] Id. at para. 143.

[8] Id. at para. 144.

[9] Report and Order, para. 86.

"[r]equiring routine environmental evaluation of such facilities would place an unnecessary burden on licensees."[10] Nevertheless, under alternative two, personal wireless providers would be required to demonstrate compliance to local and state jurisdictions. Alternative two is a needless requirement that goes beyond "regulation" to unnecessary policing.

The irony is that while the Commission proposes to let the local and state jurisdictions go beyond what the Commission requires, the local and state jurisdictions are unsatisfied. The National League of Cities and the National Association of Telecommunications Officers and Advisors states: "Of these two alternatives, the second, more detailed showing is far superior. We question, however, whether even that alternative provides sufficient assurance to the public of compliance with RF safety requirements.... We therefore propose that the second alternative showing, as amplified by paragraph 146 [of the NPRM] not be a ceiling on what a local government can require a provider to furnish."[11]

The Commission must not open the door and allow local and state jurisdictions to request information that the Commission itself finds too burdensome and unnecessary. Otherwise, it negates the framework it established in ET Docket No. 93-62, Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation.

Therefore we agree with BellSouth, if facilities are categorically excluded, a licensee should only need to certify that, based on the parameters of Table I, Section

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[10] Id.

[11] Comments of the National League of Cities and the National Association of Telecommunications Officers and Advisors, pp. 24-25.

1.1307(b), no further environmental processing is necessary. For facilities that are not categorically excluded, licensees should be only required to provide copies of any documents which were required to be filed with the Commission to demonstrate compliance.[12]

III. THE COMMISSION SHOULD ACT ON ANY REQUEST FOR A DECLARATORY RULING WITHIN 30 DAYS.

The Personal Communications Industry Association ("PCIA") and PrimCo Personal Communications, L.P. ("PrimeCo") both recommend that the Commission be required to rule on a Petition for Declaratory Ruling involving state or local regulation of the placement of personal wireless facilities based on the environmental effects of RF emissions within 30 days of the close of the pleading cycle.[13] SBMS strongly supports this recommendation. Time is of the essence in these matters. If a personal wireless provider files a Petition for a Declaratory Ruling and it is not acted on for many months, the right to petition for relief established in the Communications Act is rendered virtually meaningless.

IV. CONCLUSION.

SMBS recognizes that local and state jurisdictions have legitimate interests in the placement of personal wireless service facilities. However, Congress has explicitly limited the ability of state and local jurisdictions to regulate the construction and placement on the basis of the environmental effects of RF emissions. The

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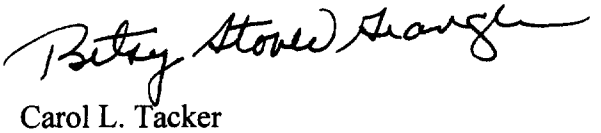
[12] Comments of BellSouth, p. 5.

[13] Comments of PCIA, p. 12; Comments of PrimeCo., p. 16.

Commission's proposed rules for this section of the Communications Act must fully reflect that limitation. For this reason, it is important that the Commission adopt alternative one to ensure that state and local jurisdictions are not given the opportunity to request information and make findings on compliance issues that are properly in the jurisdiction of the Commission. In addition, the Commission should issue a decision on a petition for declaratory ruling within 30 days from the close of the pleading cycle.

Respectfully submitted,



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